

**ARIZONA SUPREME COURT  
CHILD SUPPORT GUIDELINES REVIEW COMMITTEE  
MEETING  
MINUTES  
June 27, 2008  
Arizona State Courts Building  
Phoenix, Arizona**

**MEMBERS PRESENT:**

Mr. Robert L. Barrasso, Esq.  
Honorable Bruce R. Cohen, Chair  
Ms. Helen Davis  
Professor Ira Ellman  
Ms. Kim Gillespie  
Ms. Cele Hancock  
Mr. David Horowitz  
Ms. Gloria Pearson  
Honorable Rhonda Repp  
Honorable Michala Ruechel  
Honorable Sarah Simmons  
Honorable Kevin White

**STAFF:**

Kathy Sekardi  
Lorraine Nevarez

**MEMBERS ABSENT:**

Ms. Rebecca Albrecht

**Call to Order**

Judge Cohen, Chair, called the meeting to order at 10:10 p.m. The Chair welcomed the members.

**Approval of the Minutes**

The minutes of the May 27<sup>th</sup>, 2008 meeting were moved and approved without modification.

**Constructing Support Guidelines, Part 1 & 2**

A presentation on “*Understanding Child Support Guidelines*” was given by Professor Ira Ellman. Please see attachment for summary of presentation.

**Reports from Workgroups Regarding Progress**

This section has been tabled for the August 8, 2008 meeting.

**Review, Discuss, Assign Website Comments**

Judge Cohen asked members to read the public comments that have been received and discuss with their workgroups. The committee will discuss as a whole for the August 8, 2008 meeting.

**Discuss Other Items to Add to Agenda List**

This section has been tabled for the August 8, 2008 meeting.

**Develop August 8, 2008 Agenda**

Tara Ellman will give a presentation in the first part of the agenda. The items that have been tabled will be placed on the agenda.

**Call to the Public**

Public was not present at the meeting.

**Adjourn**

The meeting was adjourned at 2:00 PM.

## Understanding Child Support Guidelines

A presentation by Ira and Tara Ellman entitled "Understanding Child Support Guidelines" addressed three questions in detail: What do our current guidelines really do? What should the guidelines do? Why do the current guidelines do what they do? In addition, the presentation briefly discussed a fourth question-- What is the alternative?-that will be considered in more detail in a second presentation at the committee's August meeting. The charts and tables of the presentation, which set forth, supporting data, are necessarily omitted from the summary below.

### *I. What do current guidelines really do?*

Most states, including Arizona, employ a guideline model usually called "Income Shares". About ten states employ a model called Percentage of Obligor Income, often identified by the acronym POOI. The usual understanding of the difference between these two models is that Income Shares considers the incomes of both parents in setting the support amount, while POOI looks only at the income of the support obligor. The key difference, however, is that POOI states typically employ a flat percentage, while Income Shares systems usually employ a declining percentage. For example, Wisconsin, a POOI state, requires the obligor to pay 17% of his gross income in child support for one child, without regard to the income of the custodial parent. If an Income Shares state required the parents to pay 17% of their total income for one child, and then followed the normal procedure of allocating the resulting total child support amount between them in proportion to their income, it would reach the identical support amount as Wisconsin. The only reason that the support amounts called for under Income Shares and POOI guidelines differ is that Income Shares states typically employ a declining rate structure, rather than the flat rate structure of POOI states. For example, the percentage of parental gross income the current Arizona guidelines require for the support of one child declines from about 25%, for parents with the lowest incomes, to just 10% once total parental income reaches \$10,000 monthly. The rate of decline is much steeper when there are more children. The Arizona rates for two children, for example, decline from about 35% to about 12% over that same income range, in contrast to a POOI system like Wisconsin which applies a flat rate of 25% for two children.

It thus becomes clear that a key question for any guideline committee is the rate structure of the guidelines. Both the POOI system and the Income Shares system present difficulties. Applying a flat rate structure to obligor income, without regard to the custodial parent income, may produce support amounts that seem too high for cases with higher custodial parent incomes. On the other hand, some may think it unfair that obligors with the same income pay different support amounts, as they do under an Income Shares guideline when the custodial parent income is different. Perhaps of greater concern in an Income Shares system is that the regressive rates structure means that high income obligors pay relatively low support amounts to low-income custodial parents, yielding a very large decline in the child's living standard when the intact family breaks up. In addition, in both POOI and Income Shares states, but especially in the latter, children from intact families with the same total income can come out very differently after their families break up, depending upon whether they live primarily with the higher or lower income parent.

## *II. What should the guidelines do? A. Policy Considerations*

### *A. Policy Considerations*

To decide on the proper rate structure for support guidelines requires, it helps to know what one's goals for the guidelines are. Four possible goals are suggested. The first (the Well-Being Principle) is protection of the child's well-being. This goal is especially important when the custodial parent has a low income, as the child support dollars may then be crucial in providing the child with essentials necessary for a minimally adequate living standard. Therefore, the lower the income of the custodial parent, the more we can appropriately ask of the obligor. It seems likely that as custodial parent income goes up, the child well-being return on each additional dollar of income declines.

The second (the Dual Obligation Principle) recognizes that both parents have a moral obligation to contribute to their child's support, even when the child lives primarily with one of them. This "dual obligation principle" explains why we require support payments even when the custodial parent has the financial resources to alone provide the child with all that's needed. It recognizes that the child support system must care about fairness to the custodial parent, who should not have to shoulder the entire burden, as well as protection of the child's well-being. The dual obligation principle thus requires each parent to pay their fair share of the amount necessary to ensure the child's well-being, even when the custodial parent is capable of paying it alone. We might begin by assuming that each parent's share should be proportional to that parent's share of the total parental income, but nominal support amounts might also be thought sufficient to vindicate the dual obligation principle when the support obligor has a low income.

The third (the Gross Disparity Principle) calls for avoiding gross disparities in the living standard of the child and the support obligor. This goal is different than the Well-Being Principle because it vindicates a fairness claim on the child's behalf, rather than a claim for protection of the child's well being. The heart of the fairness claim is that the child, as an innocent victim of the family breakup, should not suffer a disproportionate loss in living standard on account of it, and thus should not live less well after the breakup than either of the parents. This claim may seem stronger when the child had in fact lived with the intact family for some time, and would therefore experience a living standard loss as a result of the breakup. At the same time, it is not possible to provide the child with the obligor's living standard without also conferring that living standard on the custodial parent. The obligor may reasonably object to providing such a windfall benefit for the custodial parent under the rubric of child support. A compromise between the child's fairness claim, and the obligor's objections to this windfall, is therefore necessary. The Gross Disparity Principle identifies such a compromise by restating the child's claim as the avoidance of gross disparities in living standard, rather than the avoidance of any disparity.

The fourth (the Earner's Priority Principle) reflects the common understanding that everyone is entitled to keep their own earnings unless there's some good reason to take it from them. The EPP explains why obligor objections to windfall benefits for the custodial parent require consideration. It also explains why the child support guidelines of virtually all states, including Arizona, have some form of self-support reserve, which limits the support obligation that may be imposed on a poor obligor, even when the custodial parent is also poor and child well-being is thus endangered. The EPP justifies

limiting support awards to nominal amounts in the case of impoverished obligors, and avoiding support amounts that would reduce obligor income below poverty levels.

### *B. What policies do Arizona citizens prefer?*

A scientific survey of Pima County citizens examined the principles implied by the child support awards they believed appropriate in a series of cases involving 9 different income combinations. It found they reject POOL, in that they believe that the NCPs should pay a higher rate when the CP's income is lower. They thus believe one must look at the CP's income to determine the rate that the NCP should pay. They also reject Income Shares, however, because they believe that for any given CP income, the rate paid by the NCP should not change as NCP income goes up, but should rather remain flat. This view about the rate structure was shared by men and women. The median rate favored by survey respondents was higher than provided by the Arizona guidelines, especially when CP income was low relative to NCP income. The median rate of women respondents was slightly higher than the median of men.

Arizona's guidelines set support amounts that are lower than the average for income shares states. The amounts favored by survey respondents can also be compared to Iowa's guidelines, which call for support awards that are closer to the median level among income shares states. That comparison shows that the survey median amount was very similar to the Iowa amounts for cases in which the two parents had relatively similar incomes. However, when the support obligor has a significantly higher income than the custodial parent, survey respondents favor larger support awards that are provided in Iowa's typical income shares guideline. On the other hand, when the CP parent's income is high, survey respondents favored support amounts that are lower than provided for in Iowa. The respondents' answers follow from the Well-Being and EPP principles, and are consistent with the Dual Obligation principle. Further research asking about cases with higher parental incomes is necessary to determine whether respondents also follow the Gross Disparity principle.

### *III. Why Do Our Current Guidelines Provide Different Numbers?*

Contrary to what many people think, the current guidelines are not based on what children cost, because that question cannot be answered. What children cost depends upon the living standard one wishes to buy for them. The methodology employed to generate current guideline numbers is instead based on estimates of what parents in intact families, at various income levels, spend on their children. While this idea for constructing support guidelines seems simple and straightforward, there are necessarily many complications in implementing it. Those complications largely arise because the idea cannot be implemented without answering two fundamental questions: What counts as a child expenditure? (The definition question). How can one measure child expenditures, once you have defined them. (The measurement question.)

#### *A. The definition question*

The answer to the definition question implicitly adopts a child support policy. For example, if child support policy called for support amounts that gave the child the same living standard as the child enjoyed when the family was intact, then one should seek to measure all expenditures by the intact family that conferred a benefit on the child. Current guidelines are based on a methodology that defines the relevant expenditures as the marginal expenditures on the child--the additional expenditures a family must incur in order to retain the same living standard when a child is added to their household, as they enjoyed when childless. It thus excludes from the definition of child expenditures any expenditure the parents would have made when childless, which might be called their base expenditures. For example, if parents spend the same amount on transportation before and after they have a child, then none of their transportation costs would be counted. If the addition of a child causes them to move from a two-bedroom apartment to a three bedroom apartment, then the additional cost of the added bedroom is part of the marginal expenditure, but none of the base expenditure necessary for the rest of the apartment--bathrooms, kitchen, living room, etc-- would be counted.

The typical income shares guideline is thus based on a method that seeks to allocate between the parents their respective shares of the marginal expenditures made on children in intact families of the same income level. When the parents have the same income as one another, this system produces plausible results, because the parents have the same capacity to provide the base expenditures to which these marginal expenditures are added. If parents' incomes are very disparate, however, one sees the results presented above: the support award may provide the low income custodial parent the funds needed to pay for the apartment's extra bedroom, but the CP lacks the base income required to afford the rest of the apartment in the first place. The CP and child thus experience a large reduction in living standard, while the NCP, who retains all of his contribution to intact family's base expenditures, continues to enjoy the living standard it provided. On the other hand, if it is the NCP whose income is much lower than the CP's, then upon separation the NCP's living standard may be lower than that of the child and CP before payment of any child support, and requiring this NCP to pay just his proportionate share of the marginal expenditures may impose a difficult and even unreasonable burden on him.

#### *B. The measurement question.*

The design flaws in a marginal-expenditure income shares guideline are exacerbated by difficulties in answering the measurement question, difficulties which are probably insurmountable. The difficulties are of two kinds. First, in order to identify the marginal expenditures on children, the method requires use of an equivalence scale, which is a device for measuring when two households of different composition have the same living standard. The economics literature contains many equivalent scale candidates, although within the child support community attention has focused on two of them, Engel and Rothbarth. The difficulty is that different equivalence scales yield different results, and there is no theoretical or empirical method for establishing which if any of them is correct. Arizona's guidelines are based on the Rothbarth scale, which consistently yields lower estimates of child expenditures than the Engel scale. As applied here, the Rothbarth scale assumes that the childless couple, and the couple with children, enjoys the same living standard if the two households spend the same total dollar amount for alcohol,

tobacco, and adult clothing. Whatever theoretical questions one may raise with this scale, it is also clear that the only available source of data for these expenditures figures, the consumer expenditure survey, is quite inaccurate with respect to expenditures for these particular items. Moreover, small fluctuations in these questionable expenditure estimates can have a large impact on the resulting child support calculations.

More general inaccuracies in the Consumer Expenditure Survey (CES) provide the second kind of measurement difficulty. The survey relies on the ability of consumers to remember what they have spent over the past three months, and it has been established that higher income survey respondents--those in the upper third of the survey's income distribution--consistently under-report their expenditures. This inaccuracy yields lower support amounts for the upper third of the income distribution than would result from accurate data. At the same time, it has long been known that consumers in the lower forty percent of the income distribution consistently under-report their income. This inaccuracy yields higher support amounts for the lower forty percent of the income distribution than would result from accurate data. In combination, therefore, it appears that the regressive rate pattern found in income shares guidelines are, to an important extent, an artifact of CES data problems rather than a reflection of parental behavior.

#### *IV. Conclusion*

Current guidelines show rapidly declining rates. This rate structure produces problematic results when parents have disparate incomes. It seems inconsistent with both goal of protecting child well-being, and the views of Arizona citizens as measured in a scientific survey of Pima County respondents. Moreover, the current numbers are based on a method that relies on a questionable assumption, that support amounts should be based on marginal expenditures in intact families, and then necessarily relies on faulty data to estimate these marginal expenditures.

Child support amounts should be based on the reality confronting both post-separation households, rather than on estimates of marginal expenditures on children in intact families that no longer exist or never existed. In estimating the appropriate amounts, the committee must decide on a proper balance of the competing policy concerns: Child well-being, the avoidance of gross disparities between the child's living standard and either parent's, a fair allocation of the support burden between the parents, and protecting the obligor from unreasonable demands on his earnings.